

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

DEON TOWNSEND,

Plaintiff,

vs.

BRANDON IHDE, OFFICER
BATTLE, OFFICER MARTIAN,
and the CITY OF BILLINGS,

Defendants.

CV 13-147-BLG-SEH-CSO

**FINDINGS AND
RECOMMENDATION OF UNITED
STATES MAGISTRATE JUDGE TO
DISMISS THE CITY OF BILLINGS**

Plaintiff Deon Townsend has filed a Second Amended Complaint (*ECF 26*) which is subject to prescreening pursuant to 28 U.S.C. §§ 1915, 1915A. Townsend was given an opportunity to file a second amended complaint after he sought to add the City of Billings as a defendant alleging the City should be liable “because the officers are clothed by the City.” (*February 10, 2014 Order–ECF 21*). Townsend has been informed that municipal liability under Section 1983 cannot be predicated upon a respondeat superior theory of liability and that the City could only be liable if it had a custom, practice, or policy that amounted to “deliberate indifference” to his rights. *Id.*

In the Second Amended Complaint, Townsend alleges no facts against the City, he simply restates the facts against the Defendant Officers and argues that the City of Billings should be liable for their “racist conduct.” (*Second Amended Complaint–ECF 26-1 at 12*).

These allegations are insufficient to state a claim against the City of Billings. Townsend has made no allegation that the City had a custom, policy, or practice that amounted to deliberate indifference to his rights and he provided no facts to support any such claim.

Townsend has been given two opportunities to amend his allegations and has failed to state a claim against the City. It should therefore be presumed that these defects cannot be cured by further amendment.

Based on the foregoing, the Court issues the following:

RECOMMENDATION

The City of Billings should be dismissed.

NOTICE OF RIGHT TO OBJECT TO FINDINGS & RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

Mr. Townsend may file objections to these Findings and Recommendations within fourteen (14) days after service (mailing)

hereof.¹ 28 U.S.C. § 636. Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

This order is not immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Fed.R.App.P. 4(a), should not be filed until entry of the District Court's final judgment.

DATED this 16th day of April, 2014.

/s/ Carolyn S. Ostby
United States Magistrate Judge

¹As this deadline allows a party to act after the Findings and Recommendations is "served," it falls under Fed.R.Civ.P. 6(d). Therefore, three (3) days are added after the period would otherwise expire.